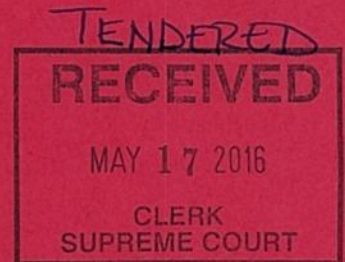


COMMONWEALTH OF KENTUCKY
SUPREME COURT OF KENTUCKY
2015-SC-000435-D



HUGHES AND COLEMAN, PLLC.

APPELLANT

v.

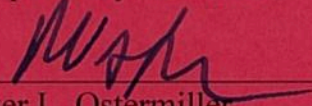
ANN CLARK CHAMBERS, EXECUTRIX OF
THE ESTATE OF JAMES W. CHAMBERS,
DECEASED

APPELLEE

On review from Court of Appeals
2013-CA-002074-MR

BRIEF ON BEHALF OF APPELLANT HUGHES AND COLEMAN, PLLC.

Respectfully submitted,



Peter L. Ostermiller

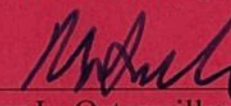
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has this 16th day of May, 2016, mailed to the following:

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Peter L. Ostermiller

INTRODUCTION

This is quantum meruit attorney's fee dispute case in which the Court of Appeals reversed the Trial Court, which had awarded Hughes and Coleman a quantum merit fee for the previous representation of a client. The Court of Appeals held that Hughes and Coleman had been terminated for good cause by the client and therefore should receive no fee as a result of Hughes and Coleman's action concerning the client's motor vehicle accident no-fault benefits.

STATEMENT CONCERNING ORAL ARGUMENT

The Appellant respectfully requests Oral Argument. Oral Argument would provide the Appellant and Appellee the opportunity to provide additional argument to this Court concerning the issues raised in the Briefs, and to expand and address any additional issues or questions which the Court may have concerning the matters set out in the Briefs.

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STATEMENT OF THE CASE

Procedural History

The Appellant, Hughes and Coleman, was the initial counsel for the Plaintiff, Travis Underwood, in a personal injury case. The client terminated Hughes and Coleman and retained Mr. Chambers as successor counsel. The case settled shortly thereafter, and a dispute arose concerning the quantum merit fee due Hughes and Coleman. After a bench trial, the Trial Court held that Hughes and Coleman had not been terminated for good cause and was entitled to a quantum merit fee. The Court of Appeals reversed the Circuit Court, holding that Hughes and Coleman had been terminated for good cause and therefore should receive no quantum merit fee.

Trial Court

On August 23, 2013 the Trial Court conducted an evidentiary hearing regarding the quantum merit attorneys' fee claim of Hughes and Coleman. Earlier, when that Trial date had been set, Hughes and Coleman, through counsel, had indicated its willingness, on the record, to participate in KBA Fee Arbitration pursuant to the procedures established by the Kentucky Supreme Court in SCR 3.810. However, such KBA Fee Arbitration requires the agreement of both parties, and Mr. Chambers expressly declined to participate in that KBA procedure. The Trial Court, on page 3, numerical paragraph 10, of its Judgment, (Appendix C), noted the decision of Mr. Chambers to not participate in KBA Fee Arbitration.

At the August 23, 2013 hearing, Hughes and Coleman was represented by counsel and offered the testimony of Judy Brown, Christina Martin and Reford Coleman. Ms. Brown is a Hughes and Coleman lawyer who worked on the personal injury case at the pre-litigation stage. Ms. Martin is a legal assistant at Hughes and Coleman who worked under the direction and supervision of Brent Travelsted, another Hughes and Coleman attorney, who worked on the case at the litigation stage. Hughes and Coleman also presented the expert testimony, by deposition, of Reford Coleman, an attorney practicing in Hardin County. Mr. Coleman is not related to the named principal of the Hughes and Coleman law firm. The Trial Court found that Mr. Coleman had extensive experience in personal injury litigation. The Court also found that in Mr. Coleman's opinion, Hughes and Coleman did nothing deficient in their representation of the Plaintiff, Mr. Underwood, that the law firm had been diligent in its communications with Mr. Underwood, kept appropriate records regarding the representation, and that Hughes and Coleman had not been fired for cause.

Hughes and Coleman filed as a collective Exhibit a 503 page binder consisting of contemporaneously generated case management system records, correspondence, pleadings, etc., which Hughes and Coleman maintained during its representation of Mr. Underwood. Hughes and Coleman also filed as its Exhibit 2 a Summary Exhibit entitled Timeline representing a summary of the case file

maintained by Hughes and Coleman. The Court of Appeals, in its Opinion, made several references to entries on that Timeline. As discussed in more detail below, the Court of Appeals made a selective review of only certain portions of the Timeline. Hughes and Coleman filed as its Exhibit 3 the discovery responses submitted by Mr. Chambers in which he responded to the request to produce the file he maintained in his representation of Mr. Underwood.

The proof on behalf of Mr. Chambers consisted of the Affidavits of Mr. Underwood and his mother, and documents attached thereto. By agreement of the parties, those Affidavits were filed as part of the proof by Mr. Chambers. Mr. Chambers did not testify at the hearing.

By agreement of the parties, the attorney's fees in dispute of \$66,660 was held by the Defendants' insurance company pending the Final Judgment of the Trial Court.

Following the Trial, the Circuit Court requested that each side submit Proposed Findings of Fact and Conclusions of Law. Thereafter, the Court took the matter under submission, and, on November 13, 2013, rendered its Findings of Fact, Conclusions of Law and Judgment, a copy of which is attached hereto as Appendix C.

The Trial Court, in its Findings of Fact, Conclusions of Law and Judgment, noted that Hughes and Coleman had been hired in October of 2012, had worked on

the case at the pre-litigation and litigation phases, and had been fired by Mr. Underwood in March of 2013. The Trial Court also noted that at the time the firm was fired, the case was in active negotiations and the insurance company had offered Mr. Underwood \$145,000. Shortly thereafter, the case settled for \$200,000. Hughes and Coleman asserted an attorneys' lien pursuant to KRS 376.460 and, by Agreed Order, the attorney's fees in dispute was held by the insurance company. The Trial Court concluded on page 5 of its Judgment that Hughes and Coleman's representation of Mr. Underwood was not deficient and that Hughes and Coleman had been discharged without cause.

The only issue Mr. Chambers raised before the Court of Appeals was the allegation that Hughes and Coleman improperly withheld no-fault benefits from Mr. Underwood. The Trial Court rejected that contention at the bottom of page 5 of its Judgment. The Trial Court noted the particular purposes for no-fault benefits. The Trial Court also noted, as established by the evidence, that Mr. Underwood had not provided Hughes and Coleman sufficient documentation to indicate that he was entitled to more lost wages benefits that he claimed he was to receive. (Judgment, p. 6, Appendix C)

Regarding the use of the Limited Power of Attorney by which Progressive, the no-fault carrier, paid the no-fault benefits balance to Hughes and Coleman to be placed in its escrow account, the Trial Court stated that an insurance company may

delegate the responsibility of the direction of the PIP benefits. The Trial Court also noted in its Judgment that Mr. Coleman, the expert witness on behalf of Hughes and Coleman, testified that such an arrangement is common.

As the Trial Court concluded, “As a whole, the evidence reflects that Hughes and Coleman was not improper in its handling of the PIP benefits.” The Trial Court also concluded that there was “considerable evidence” that Hughes and Coleman had “diligently represented the Plaintiff.” The Trial Court noted that the documentation maintained by Hughes and Coleman concerning its representation of the client, Mr. Underwood, was “extremely detailed and meticulous.” (Judgment, p. 7, Appendix C)

The Trial Court, in making the quantum meruit fee determination, applied the factors as set out in SCR 3.130-1.5, and concluded that Hughes and Coleman should receive seventy-five percent of the fee and Mr. Chambers should receive twenty-five percent of the fee. (Judgment, p. 9, Appendix C)

Mr. Chambers, in his Appeal to the Court of Appeals, did not raise any issue concerning the quantum merit fee calculation of the Trial Court. The sole issue he raised was that Hughes and Coleman was allegedly terminated for cause because the firm did not pay to Mr. Underwood during the representation the No-Fault benefits which had been paid by Progressive into Hughes and Coleman’s escrow account.

Court of Appeals

The Court of Appeals, in reversing the Trial Court, held that Hughes and Coleman was terminated for cause and, therefore, forfeited any quantum meruit fee “due to its conduct regarding Underwood’s no-fault benefits.” The Court of Appeals Opinion contended that Hughes and Coleman was not authorized by the client, Mr. Underwood, to address his No-Fault claim, and that in some way, Hughes and Coleman compelled Mr. Underwood to authorize Hughes and Coleman to handle that No-Fault claim. (Appendix A)

The Court of Appeals, on page 5 of its Opinion, suggested that Hughes and Coleman did something improper in submitting to Progressive, the no-fault carrier, a copy of a U of L Hospital bill. The purpose of submitting that bill to Progressive was to show the significant damages of Mr. Underwood and that his claims far exceeded the remaining PIP benefits which Progressive was holding at that time. The Court of Appeals also stated on page 5 of its Opinion that “nothing of record” showed that Mr. Underwood authorized Hughes and Coleman to “negotiate” his bills with his medical service providers. However, attorneys who represent claimants in personal injury claims routinely assist the client in the negotiation and resolution of healthcare bills incurred as a result of the client’s injury.

The Court of Appeals, on page 5 of its Opinion, acknowledged that the contingent fee agreement stated that Hughes and Coleman would “assist” Mr.

Underwood in submitting medical bills for payment. But, the Court of Appeals stated that since the word “negotiate” was not contained in the fee agreement, “assist” would necessarily not include “negotiate.” The Court of Appeals, on pages 6 and 7 of its Opinion also criticized Hughes and Coleman for obtaining the release of the PIP funds as allegedly contrary to the fee agreement on the ground that Hughes and Coleman was attempting to recover compensation from an entity that was not, on the basis cited by Hughes and Coleman, “legally responsible for providing compensation.”

Hughes and Coleman filed a Petition for Rehearing, which the Court of Appeals denied by its Order of July 9, 2015. (Appendix B)

Supreme Court

Hughes and Coleman filed a Motion for Discretionary Review, which this Court granted by its Order of March 9, 2016

FACTS

Hughes and Coleman is a Kentucky law firm concentrating its practice in the area of representing injured persons in personal injury claims and related claims. The law firm has its principal office location in Bowling Green, Kentucky, and has other offices, including a law office in Elizabethtown.

Motor Vehicle Accident

The underlying personal injury claim of Mr. Underwood arose from a motor

vehicle accident of October 1, 2012. Mr. Underwood's vehicle was struck by a commercial truck, and he sustained serious injuries necessitating extended hospitalization and medical treatment. Documentation surrounding the accident, including the police report, indicated that Mr. Underwood had been "unrestrained" at the time of the accident, meaning he didn't have on a seat belt, and that he may have been driving too fast, which was alleged to have been a contributing factor to the accident. (H&C Ex. 1 p.262) That fault issue regarding Mr. Underwood was raised by the Defendants' insurance company and later represented a topic of discussion between Hughes and Coleman counsel and Mr. Underwood during the representation. (H&C Ex. 1 pp. 47, 71, 72)

Hughes and Coleman

The two Hughes and Coleman attorneys who primarily represented Mr. Underwood were Judy Brown and Brent Travelsted. Other Hughes and Coleman attorneys also provided legal services, including Tim Hendricks, who made the preliminary review of the information provided by Mr. Underwood during his initial contact with the law firm, and Sheila Hiestand, who provided input in the decision to recommend to Mr. Underwood that a lawsuit be filed. (Tape 2:44:20) There were also legal assistants, who assisted the attorneys. Such legal assistants worked under the supervision and direction of the Hughes and Coleman attorneys, including Ms. Brown and Mr. Travelsted.

One of the legal assistants, Christina Martin, had worked under the supervision and direction of Mr. Travelsted, and she testified at the hearing. Unfortunately, Mr. Travelsted passed away after the Hughes and Coleman law firm was terminated, but before the trial. However, his assistant, Ms. Martin, testified concerning the extensive work performed by Mr. Travelsted, which was documented in the file produced by Hughes and Coleman as a collective exhibit, and also supported by the testimony of Ms. Brown, another Hughes and Coleman attorney who worked on the case.

The work performed by Hughes and Coleman was also set out in the documentation maintained by the law firm in its Needles case management computer system. (Tape1:30:30) Hughes and Coleman also filed as part of its Exhibit 1 the paper portion of the file maintained by the law firm in its representation of Mr. Underwood. (Tape 1:36:40) The Trial Court found on page 9 of its Findings of Fact that Hughes and Coleman maintained a “highly meticulous database” for their client cases, which documented every event, letter, telephone call, settlement offer, etc., in a particular case. (Judgment, p. 3, Appendix C)

Mr. Underwood retains Hughes and Coleman

On October 23, 2012, Mr. Underwood retained Hughes and Coleman by the execution of a Contingent Fee Agreement, which provided for a 33 1/3 % contingent fee before the filing of a lawsuit and 40% after the filing of a lawsuit. The

Agreement also referred to medical bills, stating that Hughes and Coleman would “assist the client in submitting medical bills for payment to any responsible insurance carrier or agency.” That portion of the Agreement also noted that any unpaid medical expenses not covered by insurance at the conclusion of the case would be the responsibility of the client, and that the client may be required by law or contract to reimburse an insurance carrier, Medicare, etc., to be paid out of the client’s share of any recovery.

The Court of Appeals, in its Opinion, considered it material that the Agreement said “will assist.” Therefore, in the view of the Court of Appeals, that term would not extend to any receipt of any no fault benefits, the negotiations of any medical bills, etc. As discussed in more detail below, this narrow and arbitrary reading of the Agreement disregards a reasonable application of the contract language, disregards the express authorization provided by the client during the representation, and ignores the implied authority of an attorney to pursue the representation of the client. (H&C Ex p.183)

Two days after Hughes and Coleman was retained, on October 25, 2012, Ms. Brown sent Progressive Insurance Company a letter. Progressive was Mr. Underwood’s insurance company and provided him no-fault benefits. (H&C Ex 1 p.190) Ms. Brown sent the client, Mr. Underwood, a copy of that letter. In that letter, Ms. Brown advised Progressive of Mr. Underwood’s no-fault benefits claim

and a potential claim for under-insured or uninsured benefits. The second paragraph of that letter stated that pursuant to KRS 304.39-241, Progressive was to reserve all no-fault benefits to “pay bills or lost wages only as directed by Hughes and Coleman.”

After the beginning of the representation, the law firm began to accumulate medical records and medical bills of Mr. Underwood. The Needles Notes, a case management program used by Hughes and Coleman, reflected the law firm contacting various healthcare providers and the accumulation of medical records regarding Mr. Underwood.

On November 29, 2012, Ms. Willis, the legal assistant of Ms. Brown, spoke with Mr. Underwood. (H&C Ex 1 p. 56) Mr. Underwood had expressed concerns about the contents of the police report indicating he had been driving too fast. Another issue raised during that conversation was the lost wages claim of Mr. Underwood. Ms. Willis repeated an earlier request to Mr. Underwood for him to provide to the law firm documentation regarding his previous lost wages claim. Mr. Underwood stated that he had already given that information to Progressive Insurance Company, and that he would fax that information to Hughes and Coleman. However, Mr. Underwood did not do. (Tape 3:15:18)

No- Fault Benefits

Hughes and Coleman had obtained verbal confirmation from the adjuster for

Progressive that Mr. Underwood had \$20,000 in PIP coverage. But Progressive stated that Mr. Underwood had not provided to Progressive the necessary physician statements or required wage verification documentation to support Mr. Underwood continuing to receive lost wage no-fault payments. Before Mr. Underwood retained Hughes and Coleman, he had received a lost wages no-fault benefit based on a \$200 per month statutory lost wages benefit. (Judgment, p. 2, Appendix C)

As Ms. Brown and Ms. Martin separately testified, any lost wages PIP benefit above the statutory amount was by contract with his insurance company and required verification from the insurance policy. Despite a number of requests made by Hughes and Coleman to Mr. Underwood during the representation, he did not provide sufficient documentation to Hughes and Coleman indicating that he was entitled to lost wages PIP benefits above the statutory amount. (Tape 3:02:31, 3:10:42) The Trial Court concluded on page 6 of its Judgment that Mr. Underwood had not provided that documentation to Hughes and Coleman. (Judgment, p. 2, Appendix C)

Any contention that Hughes and Coleman allegedly improperly withheld no-fault benefits from Mr. Underwood is contrary to the evidence as found by the Trial Court. The reality, as supported by the evidence presented, and as the Trial Court concluded, was that Mr. Underwood did not provide all of the necessary documentation and information to support the payment of additional no-fault

benefits for lost wages more than he was able to establish before Hughes and Coleman was retained. (Judgment, p.6, Appendix C)

By late November of 2012, the PIP carrier, Progressive, sent Hughes and Coleman a check payable to Mr. Underwood representing the balance remaining of his PIP benefits. That check, in the sum of \$18,809.94, was received by Hughes and Coleman. On December 3, 2012, Mr. Underwood executed a Power of Attorney. (H&C Ex 1 p. 220) Pursuant to that document, Mr. Underwood expressly authorized Hughes and Coleman to endorse his name to a settlement draft for the purpose of depositing those funds into the Hughes and Coleman escrow account.

The Trial Court found that the Limited Power of Attorney instrument was executed by Mr. Underwood at Hughes and Coleman, which thereby depositing the funds from Progressive into the Hughes and Coleman escrow account. (Judgment, p.6, Appendix C)

The Trial Court found on page four, numerical paragraph 14, of its Judgment that Redford Coleman, the expert who testified on behalf of Hughes and Coleman, testified that it was common for an insured, such as Mr. Underwood, to sign an authorization directing that the no-fault carrier provide the no-fault benefits to the insured's attorney, and for the counsel to then make distributions. That is what occurred in the present case, all with the knowledge and consent of Mr. Underwood. (Judgment, p.4, Appendix C)

Pursuant to that Limited Power of Attorney, Hughes and Coleman deposited those funds into its escrow account. And, shortly thereafter Hughes and Coleman's received those funds, a check for lost wages was sent to Mr. Underwood for \$973 in early December of 2012. That amount was based on the same \$200 per week statutory amount Mr. Underwood had received from Progressive as a no-fault lost wages benefit before he retained Hughes and Coleman. Mr. Underwood was not entitled to any further lost wages payments from his no-fault benefits after December of 2012 based on the information he provided to Hughes and Coleman. According to Mr. Underwood's own statements to Hughes and Coleman, by earlier November of 2012, he had returned to work. (H&C Ex. 1 pp. 58 and 67)

The documentation from Hughes and Coleman regarding its receipt of the escrowed funds and distribution of the lost wages payment to Mr. Underwood was set out on Hughes and Coleman Exhibit 1, pages 220 to 226, and was also supported by the testimony of Ms. Brown. (Tape 2:05:24)

Hughes and Coleman Presentation of Claim to Liability Carrier and Resulting Settlement Negotiations

During the rest of December of 2012 and into the beginning of 2013, Hughes and Coleman continued to accumulate and review the various medical records and medical bills of Mr. Underwood. By January 17, 2013, Ms. Brown was in a position to prepare a settlement letter and supporting documentation to submit to the insurance adjuster. (H&C Ex 1 pp 80 to 82) Ms. Brown also testified about her

process of preparing that documentation to send to the insurance company. (Tape 2:12:34)

During that same time period, Ms. Brown continued to pursue the presentation of relevant material and documentation to the insurance company in the form of a settlement claim letter. On January 22, 2013, Ms. Brown sent the insurance adjuster a letter with numerous attachments totaling 100 pages. The letter and attachments are at pages 257 to 357 of Hughes and Coleman Ex. 1. The Settlement Index to that letter, on page 260 of Hughes and Coleman Ex. 1, listed the various documents concerning Mr. Underwood which accompanied that letter, including the police report, medical treatment records, medical bills, lost wages documents and photographs.

Ms. Brown requested in her January 22, 2013 letter that the insurance company evaluate Mr. Underwood's claim. The letter which Ms. Brown sent to the insurance company did not set out a dollar amount demand. Ms. Brown testified that under Kentucky statutes regarding the settlement of claims by insurance companies, the burden is on the insurance company to evaluate and respond to a claim, and that Ms. Brown was thereby placing that obligation on the insurance company as provided for by statute. (Tape 2:22:09)

Ms. Brown, on that same day, January 22, 2013, also sent Mr. Underwood a separate letter advising that the claim package had been sent to the insurance

company and that she was waiting for a response. (H&C Ex 1 p. 358)

On January 23, 2013, Mr Travelsted, another Hughes and Coleman attorney, and Mr. Underwood had a telephone conversation. In the conversation, Mr. Underwood confirmed authority to Mr. Travelsted to file suit on his behalf in the Hardin Circuit Court. (H&C Ex 1 p. 104) (Tape 2:25:57) On the following day, January 24, 2013, Mr. Travelsted prepared the Complaint and drafted correspondence to Mr. Underwood. (H&C Ex 1 pp 106-109)(Tape 3:57:43)

On February 7, 2013, Ms. Brown received a telephone call from Matt Karpovich, the insurance adjuster for the tortfeasor's insurance company. Mr. Karpovich advised that the insurance company would offer \$125,000 exclusive of PIP. Ms. Brown forwarded that information to Mr. Travelsted so that Mr. Travelsted could follow up with the insurance adjuster and Mr. Underwood. (H&C Ex 1 pp 128-130)(Tape 2:27:06)

On February 8, 2013, Mr. Travelsted spoke with Mr. Karpovich. Mr. Travelsted's internal notes of that telephone conversation with Mr. Karpovich set out Mr. Travelsted's belief that the recovery should be "\$200K or better out of this one." (H&C Ex 1 p 129)(Tape 2:28:15)

Parenthetically, it should be noted that after Hughes and Coleman was terminated and Mr. Chambers was retained, Mr. Chambers sent one letter to the insurance company and had a number of telephone calls with the adjuster, and the

case settled for \$200,000, the same settlement range earlier noted by Mr. Travelsted.

On February 11, 2013, Mr. Travelsted spoke with Mr. Underwood. (H&C Ex 1 p.130) Mr. Travelsted discussed with Mr. Underwood the insurance company's initial offer of \$125,000 and Mr. Underwood instructed Mr. Travelsted to reject that offer and make a counter-offer of \$290,000. Mr. Travelsted did not recommend that Mr. Underwood accept that initial offer, nor, as later developed, neither did Mr. Travelsted recommend that Mr. Underwood accept the follow-up offer from the insurance company of \$145,000.

Later that day, the insurance company made another offer of \$145,000. Mr. Travelsted told the adjuster that he would forward that offer to Mr. Underwood, but would recommend that Mr. Underwood reject that counter-offer. (H&C Ex 1 p.131)

On following day, February 12, 2013, Mr. Travelsted had an extended telephone conference with Mr. Underwood and his mother, Tonya Underwood. Mr. Underwood authorized Mr. Travelsted to reject the \$145,000, (which was Mr. Travelsted's recommendation), and to make a counter-offer of \$275,000. Mr. Travelsted made that counter-offer to the insurance company. (H&C Ex 1, p.138) On the following day, the insurance adjuster contacted Mr. Travelsted and indicated that the insurance company was not going to settle the case unless Mr. Underwood lowered his claim below \$200,000. The insurance adjuster indicated that if Mr. Underwood, through counsel, was interested in dropping his claim to that level, the

insurance adjuster should be contacted. Since the client did not want to lower his demand, a position Mr. Travelsted agreed with, the insurance adjuster was not contacted at that time. (H&C Ex 1, p. 139)

As a result, the litigation continued. Ms. Brown, during her direct examination at trial, and on examination by the Trial Court, testified about the back and forth negotiation process between Mr. Travelsted and the insurance company, and the communication and conferring Mr. Travelsted had with Mr. Underwood regarding each step in the negotiation process. (Tape 2:28:15 to 2:29:20 and 3:30:45 to 3:40:23)

On the following day, February 27, 2013, Ms. Martin, Mr. Travelsted's legal assistant, called Mr. Underwood's mother. Ms. Martin reminded Ms. Underwood that the law firm needed Mr. Underwood to forward any medical bills which he received. No such medical bills were forwarded.

March 13, 2013 Termination of Hughes and Coleman

Ms. Martin received no further contact from the Underwoods regarding the request for the medical records, or for anything else. The next contact Hughes and Coleman received from Mr. Underwood was by his mother, Ms. Underwood, on March 13, 2013. Ms. Underwood indicated that Hughes and Coleman was terminated, requested that the law firm close its file and forward to Mr. Underwood the remaining no-fault funds being held in escrow. (H&C Ex 1, p.152)

The efforts of Hughes and Coleman to obtain necessary information and documentation from Mr. Underwood regarding whether he was entitled to receive additional no-fault lost wages benefit was a recurring problem during the representation, as reflected in the testimony presented on behalf of Hughes and Coleman at trial as set out earlier in this Brief. Hughes and Coleman requested from Mr. Underwood additional information to support additional no-fault benefit lost wages payouts, but did not receive the necessary documentation in order to make such a distribution consistent with prevailing Kentucky law. And, the Trial Court expressly found on page 6 of its Judgment that Mr. Underwood had not provided sufficient documentation to Hughes and Coleman.

Ms. Brown testified, as did Ms. Martin, that the PIP benefits were for wage replacement/loss wages reimbursement, to pay healthcare providers or to reimburse Mr. Underwood for any healthcare expenses he directly paid. Both Ms. Brown and Ms. Martin, and Mr. Reford Coleman, (an expert witness on behalf of Hughes and Coleman), testified that the no-fault benefits was not simply money to be turned over to the client without any supporting documentation, and that such benefits are for particular statutory purposes and not for the general use of the client.

Ms. Martin testified that because Mr. Underwood terminated the Hughes and Coleman law firm on March 13, 2013, the balance remaining of the no-fault funds, which were being held in escrow, were sent to Mr. Underwood. She also noted that

if the law firm had not been terminated by Mr. Underwood at that time, the funds would not have been paid to Mr. Underwood absent the necessary documentation to confirm that the distribution was pursuant to the statutory lost wages/medical expense purposes. (Tape 4:03:05)

As discussed in the Argument portion of this Brief, Mr. Underwood, as a matter of law, was not entitled to demand, during the time of Hughes and Coleman representation of him, that he be sent all of the funds being held in escrow without regard to the statutory purposes for those funds. Hughes and Coleman had no right to give those funds to Mr. Underwood during the time of its representation of him, without the necessary supporting documentation.

The evidence and testimony presented by Hughes and Coleman established that the law firm provided diligent, timely and competent representation of Mr. Underwood in his personal injury case. The Trial Court, in numerical paragraphs 12 to 14 in its Findings of Fact on page 4 of its Judgment, noted the expert testimony of Mr. Coleman concerning the proper conduct of Hughes and Coleman in its representation of Mr. Underwood. In particular, Mr. Coleman testified that it was common for an insurance company to sign an authorization directing that the No-Fault carrier provide the benefits to the client's attorney, and for the attorney to then direct payment to the insured. That is what Hughes and Coleman did in the present case with the knowledge and authorization of Mr. Underwood. At the time of the

law firm's termination, the case had been in active negotiations, and the insurance company had offered \$145,000. (Judgment, pp 2 and 4, Appendix C)

New counsel, Mr. Chambers, concluded the active negotiations begun by Hughes and Coleman, settling the case for \$200,000. (Judgment, p. 3, Appendix C)

The Court found and concluded on page five of its Judgment that Hughes and Coleman was not terminated for good cause. Hughes and Coleman was entitled to a reasonable fee for the services and representation which the law firm provided to Mr. Underwood in his personal injury claim. (Judgment, p. 5, Appendix C)

ARGUMENT

I. Hughes and Coleman was not terminated by the client for good cause sufficient to cause a complete attorney's fee forfeiture.

In Baker v. Shapero, 203 SW3d 697 (Ky 2006), this Court held that an attorney terminated without cause under a contingency fee agreement could recover attorney fees for the representation of the client on a quantum meruit basis. Six years later, in Lofton v. Fairmont Specialty Insurance Managers, Inc., 367 SW3d 593 (Ky 2012), this Court addressed what this Court referred to as the "flip side" of that issue, i.e., whether an attorney could maintain a quantum meruit fee claim when the attorney withdrew for alleged good cause.

The case-specific issue in Lofton was whether the attorney, who voluntarily withdrew after the client declined to accept a settlement offer at mediation, could still pursue a quantum meruit fee claim. This Court held that since the attorney did

not have an understanding with the client before mediation as to settlement posture, and the contingent fee agreement provided that the client had to agree to any settlement, the attorney was precluded from recovering a fee. As this Court noted, the contract language was surplus language given the provisions of Rule 1.2 concerning the ultimate authority of the client to settle. However, this Court did note that the issue could have been addressed by a contractual provision in the contingent fee agreement permitting the attorney to voluntarily withdraw from representation, and presumably still recover a quantum meruit fee.

However, this Court in Lofton also discussed a broader issue, equally applicable to whether the attorney withdrew or whether the client terminated the representation. The Court discussed the concept of discharge, without cause or with cause, and the effect that such termination would have on the quantum meruit fee claim of the attorney, regardless of who ended the attorney client relationship.

In Lofton this Court re-stated the general definition of a quantum meruit recovery as follows:

“Quantum meruit is an equitable remedy invoked to compensate for an unjust act, whether it is harm done to a person after services are rendered, or a benefit is conferred without proper reimbursement. It, therefore, entitles the one who was harmed to be reimbursed the reasonable market value of the services or benefit conferred. Black Law Dictionary. (9th ed. 2009)

As this Court stated in Lofton, under a strict application of Baker v. Shapero, for an attorney to receive a quantum meruit fee, the client must “discharge the attorney unjustly.”

This Court in Lofton indicated that the determination as to whether an attorney had been terminated for just cause, so as to constitute a fee forfeiture, was a case by case determination. However, this Court expressly noted the limited guidance this Court was providing the Bar on that issue. As this Court noted at the conclusion of that Opinion:

“We do not venture to delineate today what would constitute “good cause” in withdrawing from representing a client that would justify a quantum meruit fee. It would have to be determined on a case-by-case basis. Suffice to say that the conflict between lawyer and client must rise to a higher level than withdrawing from representing over a disagreement as to settlement.

Courts outside of Kentucky have discussed the issue of particular factors and topics which a Court should consider in determining whether the grounds given by the client for terminating the attorney justify a forfeiture of the attorney’s quantum meruit fee claim.

In Somuah v. Flachs Court of Appeals of Maryland, 721 A.2d 680 (Md 1998), the Maryland Court of Appeals, (the Court of last resort in Maryland), discussed the issues to be considered in determining whether the grounds given by the client for the termination of the attorney would also constitute a forfeiture of any

quantum meruit attorney fee claim. A copy of that case is attached hereto as Appendix E. As the Court held:

“As we have explained, cause for discharging an attorney can be divided into two groups: First, where the attorney commits serious misconduct, i.e., fraud or illegal conduct, etc.; and second, where the attorney acts competently and there is no serious misconduct, but the client has a good faith basis to be dissatisfied with the attorney. In the former situation, the attorney is not entitled to any fee. In the latter situation, the attorney is entitled to be compensated for the work done prior to discharge, but in a contingent fee contract, the attorney must await the occurrence of the contingency.” (721 A.2d at 687)

As the Maryland Court continued:

We hold that where a client has a good faith basis to terminate the attorney-client relationship but there is no serious misconduct warranting forfeiture of any fee, the attorney is entitled to compensation based on the reasonable value of services rendered prior to discharge, considering as factors the reasonable value of the benefits the client obtained as a result of the services rendered prior to discharge and the nature and gravity of the cause that led to the attorney's discharge. (721 A.2d at 688)

In Somuah, the attorney had been discharged by the client because the attorney was not licensed in Maryland and therefore could not have represented the client to the conclusion of the case. The attorney had not earlier disclosed to the client the lack of a Maryland license. The client contended that the action of the attorney was the unauthorized practice of law, and; therefore, the attorney was entitled to no fee. The Maryland Court of Appeals agreed that when an out-of-state attorney takes a case which would need to be filed in Maryland, the attorney should

timely disclose that fact to the client and advise the client that local counsel will need to be retained. However, the Court did not agree that the attorney's failure to do so would constitute a complete forfeiture of all compensation.

As the Maryland Court stated, the "basis" for the attorney's discharge by the client and the "cause" for forfeiture of an attorney's fee, were not one in the same. The Court concluded that the client had good reason to terminate the attorney, but that the attorney had not engaged in any "serious misconduct that justifies forfeiture of any compensation for services." Furthermore, the Maryland Court noted that the successor attorney for the client had made significant use of the information and documentation developed by the attorney seeking a quantum meruit fee in the continued pursuit of the client's case.

That is the same set of facts as in the present case as discussed earlier in this Brief. When Hughes and Coleman was terminated by the client, the case was in active negotiation, a settlement offer had been made by the insurance company, and there had been active back and forth negotiations and discussions regarding a settlement. The amount offered by the insurance company at the time Hughes and Coleman was terminated was \$145,000, and negotiations were ongoing. After Hughes and Coleman was terminated, the new attorney, Mr. Chambers, sent one letter, had several telephone calls, and concluded the negotiations to settle the case

for \$200,000, well within the settlement range already discussed by Hughes and Coleman and the client.

Similar guidance on this issue was provided by the Florida Court of Appeals in Searcy, Denney, Scarola, Barnhart & Shipley, P.A. v. Scheller 629 So. 2d 947 (Fla. App. 1993). A copy of this case is attached hereto as Appendix F. In that case, after the successful completion of the case, the attorney attempted to coerce a higher legal fee from the client than the attorney was otherwise entitled to receive. The client refused to pay the higher fee and terminated the attorney. Thereafter, the attorney sued on the fee contract and under a quantum meruit theory. The Trial Court held that the conduct of the attorney was sufficiently serious to constitute a complete forfeiture of any attorney's fee. The Florida Court of Appeals reversed, stating that the Trial Court's Order directing a complete forfeiture of the attorney fee was excessive.

The Florida Court of Appeals in Searcy looked to the Restatement of the Law Governing Lawyers, Section 49, for guidance on whether the alleged misconduct of the attorney would support a forfeiture of some or all of the lawyer's compensation. The Court cited the following language from that Section of the Reinstatement:

A lawyer engaging in clear serious violation of duty to a client may forfeit some or all of the lawyer's compensation for the matter. In determining whether and to what extent forfeiture is appropriate, relevant considerations include the extent of the violation, its willfulness, any threatened or actual harm to the client, and the adequacy of other remedies. (629 So. 2d at 951)

The Court also cited a portion of the Comments to Section 49 of the Restatement, concerning factors a Court should consider in determining whether the attorney's fee should be forfeited. The Comment discussed such factors as whether the alleged misconduct was a "repeated or continuing" violation, and whether the breach involved a "knowing violation or conscious disloyalty to a client."

As the Florida Court of Appeals concluded:

We distill from these explanatory notes that fee forfeiture is not an automatic remedy, even for serious transgressions. Forfeiture of all fees is the final remedy, one to be hesitatingly applied only when no other remedy will fairly vindicate the unique standards of conduct to which lawyers have sworn fealty. While a court should not shrink in a proper case from denying all compensation to an offending lawyer, it should do so only after exhausting the aptness of all other remedies to cure the specific act of misconduct in issue. (629 So. 2d at 953)

The balancing of relevant considerations was also discussed by the Maryland Court of Appeals in First Union Nat'l Bank v. Meyer, Faller, Weisman & Rosenberg, P.C. 723 A.2d 899 (Md. App 1999). As the Court held:

In situations where an attorney is discharged because the client has a good faith basis for being dissatisfied with the attorney, but the attorney's conduct was not wrongful in the sense that forfeiture of all fees would be justified, we strike a balance between the client's absolute right to discharge his or her attorney and the attorney's right to fair compensation for services competently rendered prior to discharge. (723 A.2d at 910)

The Court of Appeals in the present case held that Hughes and Coleman had misapplied the law concerning the receipt, handling and distribution of No-Fault benefits for the client, Mr. Underwood. As a result, the Court of Appeals concluded

that such error was sufficient for termination of cause by Mr. Underwood so that Hughes and Coleman forfeited any attorney's fee. However, the action taken by Hughes and Coleman was confirmed as appropriate and consistent with what attorneys should do by Reford Coleman, an expert witness testified on behalf of Hughes and Coleman. That evidence shows the good faith basis for the action taken by Hughes and Coleman.

The Court of Appeals below addressed the opinion expressed by Mr. Coleman by essentially stating that Mr. Coleman was incorrect on the law. As a result, Hughes and Coleman, who essentially did all of the work in order to get the case settled, in which there was an active settlement offer on the table by the insurance company at the time Hughes and Coleman was terminated, should receive no fee whatsoever.

Furthermore, the ground given by the Court of Appeals stated did not concern any aspect of the case in which Hughes and Coleman would have received a fee. It is undisputed that Hughes and Coleman was not going to take any attorney fee regarding the No Fault benefits. The evidence also showed that Hughes and Coleman was trying to properly address the No Fault benefits of Mr. Underwood. And, the evidence presented, and as found by the Trial Court, the client, Mr. Underwood, did not cooperate with Hughes and Coleman in trying to verify

coverage and obtain necessary information in order for a distribution of the No Fault benefits to be made to Mr. Underwood for a lost wages claim.

In short, the ground asserted by Mr. Chambers and accepted by the Court of Appeals was not good cause for termination and fee forfeiture. At most, there was a difference of opinion as to prevailing law regarding the handling of No Fault benefits. That difference of opinion would not equate to a good cause ground for termination of representation so as to preclude Hughes and Coleman from receiving any attorney's fees.

Hughes and Coleman respectfully submits that the conduct complained of by the client, Mr. Underwood, does not rise to the level of constituting a fee forfeiture applying the criteria and analysis used by Court's from other jurisdictions.

The ground stated by the client, Mr. Underwood, for the termination of Hughes and Coleman was based on two legally and factually inaccurate assumptions. First, the client's belief that No-Fault funds being held in escrow could have been given to Mr. Underwood at any time for any reason without condition or limitation. Second, Mr. Underwood had the incorrect belief that his lost wages claim should be paid double what he received.

As to the first issue, when the funds were forwarded from Progressive to Hughes and Coleman, with the knowledge and consent of Mr. Underwood, those funds were placed in escrow by Hughes and Coleman. The payment of those funds

did not change the character of the funds, since they still remained non-liability No-Fault benefits subject to the No-Fault statute, KRS 304.39, et seq. The funds were not a general liability recovery for Mr. Underwood.

The Court of Appeals concluded that Hughes and Coleman had a conflict between holding no-fault funds in escrow and the firm's representation of Mr. Underwood. That conclusion disregards the nature of an attorney holding funds in escrow pursuant to SCR 3.130-1.15. Under that Rule, an attorney acts as an escrow agent and should not follow inconsistent directions from the client regarding distribution of the escrowed funds.

Attorneys who do transactional work, such as real estate closings, business sales, etc., and attorneys who do litigation, such as personal injury claims or other tort claims, frequently receive funds to be placed in their escrow account subject to distribution based on certain criteria or provisions being met. When documentation is submitted to the attorney holding the funds in escrow, distributions are made either to the client or a third party pursuant to a contract.

For litigation lawyers receiving settlement funds or funds to be held in escrow during litigation, the funds are to be paid out if whatever provisions or terms have been met under which such payments are to be made. For example, if there was a settlement, the client would have to execute certain documentation, typically a release and settlement distribution documentation, before the funds are paid to the

client. Requiring the client to sign such documents before releasing escrowed funds to the client is not a conflict. It is the attorney performing the obligations concerning escrowed funds pursuant to SCR 3.130-1.15.

For either the transactional lawyer or the litigation lawyer, the client may not unilaterally state that funds are to be paid to the client if there are contractual or statutory conditions which must be met before the funds can be distributed. Imposing such obligations on the client before distributions are made from the escrow account is expressly contemplated in the Rule governing an attorney's handling of such funds as set forth in SCR 3.130-1.15.

If, during the representation, the client insisted that distributions be made contrary to the circumstances under which the funds were received by the attorney, and the attorney refused to do so, the client might terminate the lawyer. Such a termination, as occurred in the present case, would be without good cause. For the client to condition continued representation on the attorney paying out funds during the representation contrary to the attorney's obligation would be a bad cause termination by the client.

Regardless of whether Mr. Underwood's termination of Hughes and Coleman was without good cause, since the representation had been terminated and Mr. Underwood did not have successor counsel at that time, the balance of the funds in escrow were forwarded to Mr. Underwood. Again, the character of the funds as No-

Fault benefits did not change. What did change was that the law firm no longer represented Mr. Underwood.

As to the second issue, basic statutory PIP coverage provides up to \$10,000 per person per accident for medical expenses, lost wages and similar “out-of-pocket.” A person may contract for a greater amount of No-Fault coverage, referred to as ARB. But, ARB is a matter of contract, may be subject to contractual terms and limitations, and is not a statutory entitlement.

Since ARB is a contractual, not a statutory, matter, the scope of the benefits is defined in the insurance policy. After Hughes and Coleman eventually received the policy, the documentation showed that Mr. Underwood had an extra \$10,000 in No-Fault benefits, but not a doubling of any lost wage benefit. In short, the documentation showed that Mr. Underwood’s belief was wrong, which was part of his reason for terminating the law firm, and that he did not have a contractual right to receive a higher lost wage amount than he otherwise received. Furthermore, Mr. Underwood did not cooperate with Hughes and Coleman in providing information and documentation concerning his coverage and his medical expenses and bills, as supported by the evidence and found by the Trial Court.

The grounds stated for termination by the client was that Hughes and Coleman did not simply turnover the PIP money to him without condition, and that

the client believed that his wages claim should be paid at double the rate because he had additional No-Fault coverage. Both contentions were legally inaccurate.

The Court of Appeals concluded in footnote in its Opinion that Hughes and Coleman's "course of action was not in accord with well-settled law on the issue." That analysis by the Court of Appeals, which was not even a grounds cited by the client for termination of the representation, also reflects a misunderstanding and misapplication of the purpose and application of No-Fault benefits. Furthermore, the evidence presented, both lay and expert showed the good faith nature of Hughes and Coleman's conduct concerning the No-Fault benefits.

The Court of Appeals' Opinion represents an unwarranted forfeiture of the equitable fee due Hughes and Coleman for the substantial and valuable work performed by the law firm, work which the successor attorney, Mr. Chambers, used to conclude the case with little meaningful additional work given the amount of work which the law firm had performed before wrongfully terminated by Mr. Underwood.

Hughes and Coleman respectfully submits that it was not terminated for good cause sufficient to constitute a fee forfeiture. The Judgement of the Trial Court should be reinstated.

II. An attorney's representation of a client in a motor vehicle accident personal injury claim includes representing the client's No-Fault motor vehicle reparation benefits claim.

The Court of Appeals stated on page 4 of its Opinion that “nothing in the record” indicates that Hughes and Coleman was directed or authorized by the client to “reserve or otherwise manage his reparation benefits.” However, the contemporaneous facts and activity of Hughes and Coleman with Mr. Underwood in both documentation and other communications with him, as found by the Trial Court, establishes that Mr. Underwood was fully aware of the action which Hughes and Coleman was taking on his behalf concerning his No-Fault benefits.

Moreover, the analysis by the Court of Appeals of the scope of representation issue turns that issue on its head by artificially limiting the scope of representation, when the ethics rules and case law provide to the contrary.

Under SCR 3.130-1.2 of the Rules of Professional Conduct, a lawyer may limit the scope of the representation if the limitation is reasonable. And, in the oft-cited Opinion of the Court of Appeals in Daugherty v. Runner, 581 S.W.2d 12 (Ky. App. 1979), the Court of Appeals acknowledged duties and responsibilities the lawyer owes to the client regarding matters which are part of the legal representation. The Court of Appeals in Daugherty also noted that an attorney should not completely disregard matters coming to his or her attention during the

representation which could expose the attorney to professional liability if not addressed by the attorney.

In the present case, the Court of Appeals suggested in Footnote 5 on page 4 of its Opinion that Hughes and Coleman had engaged in “unilateral enlargement of authority.” That statement by the Court of Appeals, in addition to being contrary to the factual determinations made by the Trial Court and the evidence below concerning the knowledge and consent of Mr. Underwood to the action being taken by Hughes and Coleman, also represents a serious misreading and misapplication of an attorney’s authority in the representation of a client. That quoted language from the Court of Appeals in its Opinion, if permitted to stand, would significantly and artificially limit the scope of representation which an attorney may provide a client.

Hughes and Coleman respectfully submits that it acted well within the scope of its representation of Mr. Underwood concerning his no-fault benefits as an integral part of his personal injury claim.

III. Court of Appeals engaged in an improper fact-finding function in its Opinion.

The Court of Appeals, in its Opinion, beyond placing an over-emphasis on a demonstrative aid Timeline, in lieu of the actual detailed evidence, also improperly engaged in a fact-finding function. Only the Trial Court may make factual determinations, and it is not for an appellate court to make its own factual determinations.

As this Court noted in University of Louisville v. Shake, 5 S.W.3d 107 (Ky. 1999), appellate courts are not supposed to make findings of fact. That is the function of the Trial Court. But, an appellate court cannot take it one step further, by making factual determinations not made by the Trial Court.

This is not an issue of the Court of Appeals holding that the factual determinations made by Trial Court were not supported by substantial evidence. This was a case of the Court of Appeals making separate findings of fact to support its erroneous reading of the law.

For example, on page 8 of the Opinion, the Court of Appeals noted that Mr. Underwood's Affidavit, and the Affidavit of his mother, set out certain factual allegations, and notes that Hughes and Coleman did not "contest" those factual statements. That paragraph at the bottom of page 8 and the beginning of page 9 of the Court of Appeals' Opinion might be an appropriate matter for the Trial Court to address in rendering its Findings of Fact. However, it is for the Trial Court to accept as true or false factual allegations. Even if a particular factual allegation is not directly refuted by the opposing party, that does not mean that the trier of fact is compelled to accept as true whatever the other person says.

In the present case, the Trial Court engaged in a detailed review of the facts concerning the legal representation provided by Hughes and Coleman. The Court of

Appeals was not authorized, as an appellate court, to engage in an additional or separate finding of fact function.

IV. Court of Appeals' Opinion is inconsistent with Court of Appeals' Opinion in Medlin v. Progressive Direct Ins. Co., 419 S.W.3d 60 (Ky App 2013).

In the present case, Hughes and Coleman, with the knowledge and consent of the client, Mr. Underwood, pursuant to a Limited Power of Attorney, released the remaining balance of the No-fault benefits to Hughes and Coleman. Those funds were deposited into the escrow account of Hughes and Coleman. The Trial Court held on pages 5 and 6 of its Conclusions of Law that Hughes and Coleman properly received and made distributions, as appropriate, from those escrowed No-fault funds. Furthermore, the Trial Court noted that Mr. Coleman, the expert who testified on behalf of Hughes and Coleman, testified that the type of agreement is common. As the Trial Court concluded, the evidence reflected that Hughes and Coleman acted properly in its handling of the PIP Benefits. (Judgment, pp 6-7, Appendix C)

In Medlin v. Progressive Direct Ins. Co., 419 S.W.3d 60 (Ky App 2013) the Court of Appeals held that the PIP carrier could not be required, but was not precluded, for making a direct payment of No-Fault benefits to the claimant if certain statutory criteria were satisfied as to the use of those funds. A copy of that case is attached hereto as Appendix D. However, the Court of Appeals, in its

Opinion in the present case, effectively precluded an attorney from receiving in escrow the clients No-Fault benefits for distribution pursuant to the criteria set forth in the No-Fault statute.

As a result, there is an apparent conflict between two Opinions of the Court of Appeals, one already published and one to be published, creating an artificial limitation on the full scope of the legal representation which an attorney may provide a client concerning those funds.

These Opinions reflect an apparent inconsistency and, the latter Opinion in the present case, artificially limits the ability of the attorney to address the No-Faults benefit issue of the client notwithstanding the earlier Opinion in Medlin, which acknowledged greater flexibility, consistent with the statute, in the handling of No-Fault benefits

In Medlin v. Progressive Direct Insurance Company, 419 SW 3d 60 (Ky. App. 2013), the Court of Appeals addressed the same issue which Mr. Chambers presented to the Court of Appeals. In Medlin, the injured person, Mr. Medlin, sent a letter to his insurance company, Progressive, following a motor vehicle accident, stating that he wanted his PIP benefits paid directly to him. Mr. Medlin argued that he was entitled to receive his PIP benefits directly so that he could personally pay his medical bills. However, Progressive did not agree to giving those benefits directly to the insured.

In support of his contention, Mr. Medlin cited KRS 304.39-210 and KRS 304.39-241. Mr. Medlin contended that under the statutory scheme for no-fault benefits, he, as the insured, had the right to direct the payment of benefits among the elements of loss in any way he saw fit. As a result, he wanted Progressive to send him a check, in his name only, so that he could directly pay his healthcare providers. However, the Court noted that Mr. Medlin had not incurred any economic loss regarding any medical bills since he had not personally paid his medical bills. Therefore, the Court of Appeals held that he could not be reimbursed out of no-fault benefits for losses which he had not yet incurred.

The Court of Appeals in Medlin also drew a distinction between what Progressive was required to do under the no-fault statute and what Progressive could agree to do. For example, Hughes and Coleman could not have required Progressive to forward the balance of the no-fault benefits to Hughes and Coleman to be placed in its escrow account. On the other hand, Progressive could agree to do so, as it did in the present case, with the knowledge and consent of Mr. Underwood.

In Medlin, The Court of Appeals noted that an option which Progressive, (coincidentally the same insurance company as in the present Appeal), could agree to do could be something which it could not be required to do.

In the present case, Mr. Underwood had received lost wages no-fault benefits before he retained Hughes and Coleman and received lost wages payment under the

same formula used by Progressive after the balance of the no-fault benefits funds were paid by the client's insurance company. He received those lost wage benefits because he was still off work and had the supporting documentation.

Although Hughes and Coleman had a difficult time in getting the lost wages information from Mr. Underwood in November of 2012, sufficient wage lost verification information was received so that after the balance of the no-fault benefits were paid by Progressive and placed in Hughes and Coleman's escrow account, a lost wages payment was made to Mr. Underwood. But, according to Mr. Underwood's own statements to Hughes and Coleman, by earlier November of 2012, he had returned to work. (H&C Ex. 1 pp. 58 and 67)

In short, the contention that Hughes and Coleman refused to make any additional lost wages payments to Mr. Underwood out of the remaining no fault benefits being held in escrow is contrary to the actual facts of this case.

Hughes and Coleman, with the knowledge and consent of Mr. Underwood, received from Progressive the balance of the no-fault benefits regarding Mr. Underwood to be held in escrow. Shortly before their receipt of those no-fault benefits in December of 2012, Mr. Underwood confirmed that he had been off work from October 1, 2012 and had returned to work on November 8, 2012. That information was provided by Mr. Underwood, the client, to Hughes and Coleman, in a December 6, 2012 telephone call which was memorialized in the case management

records of the law firm. (H&C Ex. 1 p. 67)

Thereafter, Hughes and Coleman was in the process of trying to maximize the use of the no-fault benefits for the payment of Mr. Underwood's medical bills by seeing if the medical bills already incurred could be discounted down by the respective healthcare providers. However, that would not have been money which would have been paid directly to Mr. Underwood.


The Court of Appeals misapplied prevailing law contrary to Medlin v. Progressive Direct Insurance Company, 419 SW 3d 60 (Ky. App. 2013).

CONCLUSION

Based on the foregoing, the Appellant, Hughes and Coleman, respectfully submits that the Court of Appeals' Opinion represents a serious misreading of prevailing Kentucky law and is based on facts which were not found by the Trial Court. The Opinion creates arbitrary and narrow criteria for the termination of an attorney and barring the attorney from receiving a quantum meruit fee. The Opinion of the Court of Appeals improperly expands what would be sufficient good cause to terminate an attorney and preclude the attorney from receiving any fee.

The Opinion of the Court of Appeals should be reversed, and the Judgment of the Trial Court should be affirmed and reinstated.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'POstermiller', written over a horizontal line.

Peter L. Ostermiller
Counsel for Appellant